Supreme Court, U.S.
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No. 05-980

IN THE

Supreme Court of the United States

JERRY FALWELL and JERRY FALWELL MINISTRIES,

Petitioners,

v.

CHRISTOPHER LAMPARELLO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case involves only the use of Dr. Jerry Falwell's trademarked name, with an extra letter "l", as the intentionally confusingly similar domain name FALLWELL.COM which opens to Mr. Lamparello's multifaceted, noncommercial,[1] website. In rejecting the doctrine of initial interest confusion, the Fourth Circuit has split with the Second, Third, Fifth, Sixth, Seventh and Ninth Circuits.

1. Whether *likelihood of confusion* set out in the Federal Trademark (Lanham) Act as the hallmark of trademark infringement includes "initial interest confusion," *i.e.*, confusion that is later dispelled, and, if so, whether the Lanham Act is content neutral as between infringing commercial or noncommercial speech, except where Congress specifically provided otherwise?

2. Whether use of a domain name intended as the closest possible misspelling of another's trademark (and not otherwise used as misspelled) can be a "bona fide noncommercial . . . use of the mark in a site accessible under the domain name" as provided in the Anticybersquatting Consumer Protection Act (ACPA), and, if so, whether such may be treated as the functional equivalent of a safe harbor when a safe harbor is otherwise provided in ACPA?

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1. While Petitioners argued below and still believe, for several reasons, that the Lamparello website is commercial, we accede to the Fourth Circuit's determination that it is noncommercial.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are Dr. Jerry Falwell and Jerry Falwell Ministries. Jerry Falwell Ministries is a Virginia non-profit, non-stock, tax exempt, corporation. As such there is no parent corporation or any corporation owning 10% or more of its stock.

Respondent is Christopher Lamparello.

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